

IN THE MATTER OF	:	BEFORE THE
TSC/JMJ WATERLOO ROAD, LLC	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 06-005V

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DECISION AND ORDER

On March 27, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of TSC/JMJ Waterloo Road, LLC, Petitioner, for variances to reduce (a) the required 75' use setback from a residential district to 10 feet for parking uses and to 64 feet for a building, and (b) the required 30' use setback from a public street right-of-way to 14 feet for parking¹ to be located in a POR (Planned Office Research) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Richard B. Talkin, Esquire, represented the Petitioner. No one testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property, known as 5511 and 5513 Waterloo Road, is located in the 1st

¹ The Petitioner amended its petition at the hearing to include a request for a variance from Waterloo Road. The proposed plan was unchanged.

Election District on the east side of Waterloo Road (Maryland Route 108) immediately north of its intersection with Falls Run Road in Ellicott City (the “Property”). The Property is identified on Tax Map 31, Grid 19 as Parcels 428 and 467.

The Property is rhomboidal in shape and contains about 3 acres. The Property is about 670 feet long and about 163 wide. The Property is wooded and unimproved except for a single-family dwelling located in the southwest portion of the lot, which will be removed. The topography of the Property slopes down about 70 feet from the road frontage to the rear of the lot, although the center of the Property is relatively level.

2. Vicinal properties include:

(a) To the north of the Property are several POR zoned lots fronting on Waterloo Road. Parcel 427, to the immediate north, is the site of a garden center special exception (BA Case No. 85-30 E). Further north, Parcel 470 is the site of a two-story single-family detached dwelling.

(b) To the east and south is the R-SA-8 zoned Ashton Woods apartment development. The portion of the apartment development that is immediately adjacent to the south is wooded open space.

(c) To the west across Waterloo Road are various R-20 zoned properties containing single-family detached dwellings.

3. The Petitioner proposes to construct on the Property a five-story, 50,000 square foot (10,000 square feet per floor) building to be located near the center of the site about 10 feet from the north side lot line and 64 feet from the south side lot line. The building will therefore encroach 11 feet into the required 75-foot setback from a residential district required by Section

115.D.3.a.

The building will be surrounded by associated parking for 200 vehicles. Some of the parking spaces will be located as close as 10 feet from the south lot line and others will be located as close as 14 feet from Waterloo Road. These parking spaces will therefore encroach 65 feet into the required 75-foot setback from a residential district required by Section 115.D.3.a, and 16 feet into the required 30-foot setback from a public street right-of-way required by Section 115.D.3.c.

A driveway will be located approximately through the center of the site.

4. Waterloo Road is a minor arterial road with two northbound and two southbound lanes and a left-turn lane at Falls Run Road, with variable pavement width within a variable width right-of-way. The posted speed limit in the area of the Property is 45 miles per hour. The DPZ report indicates that sight distance from the proposed driveway entrance is over 600 feet in each direction.

5. According to the DPZ report, most of the other POR zoned properties in the area are significantly wider than the Property. Given the required setbacks, the building envelope for the site is only 110 feet wide and 550 feet long.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find that the requested variances comply with Section 130.B.2.a(1) through (4), and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render

conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

The Property is unusually narrow for a POR zoned parcel. This narrowness is exacerbated by the fact that the Property is uniquely surrounded on two sides by R-SA-8 zoned land and a public street right-of-way on a third side. Consequently, the site has at most only a 110-foot wide building envelope, which is insufficient space in which to construct a reasonably sized POR facility with associated parking. These structures and uses could not be practically located on the Property without variances. Consequently, I find that the narrowness of the Property is a unique physical conditions that causes the Petitioner practical difficulties in complying with the setback requirements, in accordance with Section 130.B.2.a(1).

2. The proposed building and parking will be used for permitted business purposes. The areas of encroachment are generally to the south which adjoins an unimproved open space area and Falls Run Road. The variances, if granted, will therefore not alter the essential character of the neighborhood in which the lot is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the narrowness of the Property, and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

4. The proposed structure is located in the north central portion of the site. The parking surrounds the building and cannot be feasibly located elsewhere on the Property. The building and

parking are of reasonable size for the POR zone. Within the intent and purpose of the regulations, then, the variances are the minimum variance necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

Based upon the foregoing, it is this **24th day of April 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of TSC/JMJ Waterloo Road, LLC, Petitioner, for variances to reduce (a) the required 75' use setback from a residential district to 10 feet for parking uses and to 64 feet for a building, and (b) the required 30' use setback from a public street right-of-way to 14 feet for parking to be located in a POR (Planned Office Research) Zoning District, is hereby **GRANTED**;

Provided, however, that the variance will apply only to the uses and structures as described in the petition submitted, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Thomas P. Carbo

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.